

IP 97-0041-CR 4 H/F US v Janes  
Magistrate Kennard P. Foster

Signed on 5/17/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES OF AMERICA,

Plaintiff,

VS.

GARY C. JANES,

Defendant.

Cause No. IP 97-41-CR-04 (H/F)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

|                           |   |                                |
|---------------------------|---|--------------------------------|
| UNITED STATES OF AMERICA, | ) |                                |
|                           | ) |                                |
| Plaintiff,                | ) |                                |
|                           | ) |                                |
| vs.                       | ) | Cause No. IP 97-41-CR-04 (H/F) |
|                           | ) |                                |
| GARY C. JANES,            | ) |                                |
|                           | ) |                                |
| Defendant.                | ) |                                |

**MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable John Daniel Tinder, Judge, for the Honorable David F. Hamilton, Judge, on March 30, 2005, designating this Magistrate Judge to conduct hearings on the Petition for Summons or Warrant for Offender Under Supervision, filed with the Court on March 30, 2005, and to submit to Judge Hamilton proposed Findings of Facts and Recommendation for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). All proceedings in this matter were held on May 16, 2005 pursuant to Title 18 U.S.C. §3583, and Rule 32.1(a)(1) of the *Federal Rules of Criminal Procedure*. The government appeared by Josh Minkler, Assistant United States Attorney. The defendant appeared in person with his appointed counsel, Jim McKinley, Office of Indiana Federal Community Defender. Holly Barrineau, U. S. Parole and Probation officer, appeared in lieu of Ross Carothers, U. S. Parole and Probation officer, and participated in the proceedings.

The Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583, on May 16, 2005:

1. That Jim McKinley, Office of Indiana Federal Community Defender, appointed counsel, was present to represent Mr. Janes in regard to the Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Mr. Janes and his counsel who informed the Court that they had read and understood the specifications of each alleged violation and waived further reading thereof.

3. Mr. Janes was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violations of his supervised release contained in the pending Petitions.

4. That Mr. Janes would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. That Mr. Janes had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. That if the preliminary hearing resulted in a finding of probable cause that Mr. Janes had violated the alleged condition or conditions of supervised release set forth in the Petitions, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Tinder's designation on March 30, 2005.

7. Mr. Janes stated his readiness to waive the preliminary hearing at each hearing regarding the Petition then under consideration. Mr. Janes then waived, in writing, the preliminary hearing and he was held to answer.

8. The parties stipulated the following in open Court:

(1) Mr. Janes and the government agreed they were ready to proceed to disposition on the pending Petition to REVOKE Mr. Janes' supervised release in open Court this date.

(2) Mr. Janes admitted that he committed the violations of specifications set forth in the Petition to Revoke Supervised Release, filed with the Court on March 30, 2005 as follows:

| <u>Violation Number</u> | <u>Nature of Noncompliance</u>   |
|-------------------------|--|
| 1                       | <p><b>The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.</b></p> <p>The defendant failed to contact his probation officer within seventy-two hours of being arrested on March 6, 2005, in Bartholomew County, Indiana, for Failure to Appear. The probation officer was notified of the new arrest by the defendant's substance abuse counselor.</p>  |
| 2                       | <p><b>The defendant is to be placed on electronic monitoring at his mother's residence pending designation by the Bureau of Prisons.</b></p> <p>On December 10, 2004, the defendant signed the Home Confinement Program Participation Agreement which required the defendant pay \$3.44 per day for the cost of Electronic Monitoring (EM). As of March 23, 2005, (the date the defendant was terminated from the EM program) the defendant had paid nothing toward the costs of Electronic Monitoring.</p> <p>On March 21, 2005, the probation officer advised the defendant he shall remove his EM bracelet the morning of March 24, 2005, and return the EM equipment to the U.S. Probation Office in Indianapolis prior to his self-surrender at VOA the same day. As of March 24, 2005, the defendant has not returned his EM equipment even though he removed the bracelet from his ankle on March 23, 2005.</p> |
| 3                       | <p><b>The defendant shall be confined in a community corrections center (i.e., the Volunteers of America facility in Indianapolis) for a period of six months, to begin as soon as possible.</b></p> <p>The defendant was instructed by the probation officer to report to the Volunteers of America (VOA) facility in Indianapolis on Wednesday, March 23, 2005, at 10:00 a.m. The defendant failed to report as directed. His current whereabouts are unknown.</p>   |

**If the judgment imposed a fine or restitution obligation, it shall be a condition of Supervised Release that the defendant shall pay any such fine or restitution that remains unpaid at the commencement of the term of supervision in accordance with any Schedule of Payments set forth in the Criminal Monetary Penalties sheet of the judgment. In any case, the defendant shall cooperate with the probation officer in meeting any financial obligations.**

The defendant was ordered by the Court to pay a fine of \$2,000. He was instructed by his probation officer to pay \$50 per month. According to records of the U.S. District Court Clerk, the last payment received was on July 22, 2003, while the defendant was incarcerated.

(4) Mr. Janes has a relevant criminal history category of III. *See*, U.S.S.G. §7B1.4(a).

(5) The most serious grade of violation committed by Mr. Janes constitutes a Grade C violation, pursuant to U.S.S.G. §7B1.1(b).

(6) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release the range of imprisonment applicable to Mr. Janes is 5 to 11 months

(7) The parties agree that the appropriate disposition for Mr. Janes' violation of the conditions of supervised release is a total of 14 months, which includes the 6 months in a community corrections facility previously ordered on December 22, 2004, with no supervised release to follow.

8. The Court then placed Mr. Janes under oath and inquired directly of him whether he admitted committing violations of supervised release contained in the Petition to Revoke Supervised Release. Mr. Janes admitted the violations.

The Court, having heard the admission of the defendant, the stipulations of the parties, and the arguments and discussions on behalf of each party, **NOW FINDS** that the defendant, Gary C.

Janes, violated the above-delineated conditions of his supervised release. The defendant's supervised release is therefore **REVOKED**, and Gary C. Janes is sentenced to the custody of the Attorney General or his designee for a period of 14 months, with no supervised release to follow.

The Magistrate Judge recommends that Mr. Carothers, U. S. Parole and Probation officer, prepare for submission to the Honorable David F. Hamilton, as soon as practicable, a supervised release revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

Counsel for the parties and Mr. Janes stipulated in open Court waiver of the following:

1. Notice of the filing of the Magistrate Judge's Report and Recommendation;
2. Objection to the Report and Recommendation of the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(B); Rule 72.b, *Federal Rules of Civil Procedure*, and S.D.Ind.L.R.72.1(d)(2), *Local Rules of the U. S. District Court for the Southern District of Indiana*.

**WHEREFORE**, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above report and recommendation revoking Mr. Janes' supervised release.

**IT IS SO RECOMMENDED** this 17<sup>th</sup> day of May, 2005.

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Kennard P. Foster, Magistrate Judge  
United States District Court

Distribution:

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